

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 IO-13 ISO-00 CIAE-00 DODE-00 PM-05

H-01 INR-10 NSAE-00 PA-01 SP-02 SS-15 DOE-11

ACDA-12 NASA-01 SOE-02 OES-07 NRC-05 CEQ-01

TRSE-00 OMB-01 EB-08 NSCE-00 SSO-00 USIE-00

INRE-00 /111 W

-----104676 031547Z /45

O 031508Z MAR 78

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC IMMEDIATE 9842

INFO AMEMBASSY MOSCOW

AMEMBASSY OTTAWA

C O N F I D E N T I A L USUN NEW YORK 00752

FOR NSC:HUBERMAN

DOD/OSD:SLOCOMB

NASA:TERRELL

E.O. 11652: GDS

TAGS: TSPA, UN, CA, UR, US

SUBJECT: LEGAL ASPECTS OF COSMOS 954: CONSULTATIONS WITH
CANADA

1. OUTER SPACE SCIENTIFIC AND TECHNICAL SUBCOMMITTEE, US-
DEL (STEWART AND PIKUS) HELD PRODUCTIVE INFORMAL CONSUL-
TATIONS MARCH 1 IN NEW YORK WITH DICKSON (EXTAFF UN LEGAL
OPERATIONS) AND KIRSCH (CMUN LEGAL ADVISER) ON SUBSTANTIVE
LEGAL ASPECTS AND IMPLICATIONS OF COSMOS 954 INCIDENT.
DISCUSSIONS INCLUDED INTER ALIA INTER-RELATIONSHIP OF 1968
RETURN AGREEMENT AND 1973 LIABILITY CONVENTION; POSSIBLE
EFFECT OF SOVIET NON-PARTICIPATION IN SEARCH AND RECOVERY
OPERATIONS ON SOVIET OBLIGATION TO PAY FOR THOSE OPERA-
TIONS; AND RELEVANCE OF PRECEDENTS UNDER INTERNATIONAL
TORT LAW AND DOMESTIC LEGISLATION REGARD-
ING ACCIDENTAL LOSS OF RADIOACTIVE MATERIALS.

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2. DICKSON PROVIDED COPY OF INFORMAL TRANSLATION OF FEBRU-
ARY 20 SOVIET NOTE (POUCHED L/UNA) RESPONDING TO CANADIAN
NOTIFICATION ON FEBRUARY 8 UNDER ARTICLE 5 OF RETURN
AGREEMENT THAT PARTS OF A SPACE OBJECT BELIEVED TO BE COS-
MOS 954 HAD BEEN FOUND ON CANADIAN TERRITORY. SOVIET NOTE
QUOTE REGRETS UNQUOTE SEARCH AND REMOVAL OPERATION CARRIED

ON WITHOUT SOVIET PARTICIPATION EVEN THOUGH ASSISTANCE WAS OFFERED AND THAT CANADIAN NOTIFICATION WAS MADE TWO WEEKS AFTER SATELLITE QUOTE CEASED TO EXIST UNQUOTE AND AFTER INFORMATION ABOUT OBJECTS HAD BEEN MADE PUBLIC. NOTE ALSO STATES THAT THE OBJECTS QUOTE DO NOT PRESENT INTEREST TO THE SOVIET SIDE AS SUCH AND THAT CONSEQUENTLY THE CANADIAN SIDE CAN CONTINUE TO DISPOSE OF THEM AT ITS OWN DISCRETION UNQUOTE. NOTE CONCLUDED BY SAYING SOVIET SIDE IS GUIDED BY INTERNATIONAL AGREEMENTS REGULATING SPACE ACTIVITIES.

3. CANADA INTENDS TO RESPOND PRIOR TO LEGAL SUBCOMMITTEE MEETING MARCH 13 BY INFORMING SOVIETS IT WILL PRESENT DETAILED CLAIM FOR COMPENSATION IN DUE COURSE. NOTE MAY ALSO POINT OUT CANADA HAS ASKED FOR SOVIET ASSISTANCE IN FORM OF INFORMATION. CONSIDERATION IS BEING GIVEN TO REQUESTING SOVIETS TO PROVIDE OBSERVER FOR, OR OTHERWISE PARTICIPATE IN, CONTINUING RECOVERY OPERATIONS.

4. ASKED ABOUT SPECIFIC COMPONENTS OF CLAIM FOR COMPENSATION DICKSON SAID IT WILL PRESUMABLY INCLUDE (A) COSTS OF SEARCH AND RADIATION MONITORING, INCLUDING COSTS RELATED TO US ASSISTANCE; (B) EXPENSES RELATED TO RECOVERY AND RETURN OR DISPOSAL OF COMPONENT AND PARTS OF THE SATELLITE; AND (C) DAMAGES. USDEL NOTED QUESTION OF INCORPORATING EXPENSES OF US ASSISTANCE IS DELICATE, HAS BEEN CONFIDENTIAL

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UNDER REVIEW IN WASHINGTON, AND WOULD BE THE SUBJECT OF FUTURE DISCUSSIONS WITH CANADA.

5. CANADIANS MADE A POINT OF STRESSING THE IMPORTANCE THEY ATTACH TO PROMPTLY ACHIEVING SOME CONCRETE RESULTS IN UN AS WELL AS THEIR UNHAPPINESS OVER POSSIBLE PROCEDURAL HURDLES TO TAKING UP COSMOS 954 IN LSC. THEY ARE CONSIDERING ALTERNATIVES AVAILABLE AT OSC MEETING IN JUNE, WITH AN EYE TOWARDS SECURING GA ACTION IN FALL WHICH COULD RESOLVE THESE PROBLEMS. IN ANY EVENT, THEY INTEND TO KEEP CLAIMS ISSUE SEPARATE FROM UN CONSIDERATION OF POSSIBLE REGULATORY REGIME, AND HAVE TOLD SOVIETS THEY WOULD BE DISCUSSING CLAIMS ISSUE ONLY WITH US.

6. COMMENT: IT SEEMS EVIDENT SOVIETS ARE AT LEAST INITIALLY TAKING A VERY NARROW VIEW OF THEIR LEGAL OBLIGATIONS WITH RESPECT TO COSMOS 954. THEY HAVE NOT ADMITTED RECOVERED DEBRIS IN FACT CAME FROM 954, HAVE SUGGESTED THEY WILL NOT ASK FOR RETURN OF DEBRIS, AND HAVE INTIMATED CANADA REGUSED OFFER OF ASSISTANCE -- ALL OF WHICH SUGGESTS THEY ARE MANEUVERING TOWARDS BEING ABLE TO SAY THEY HAVE NO LIABILITY. THIS MAY CHANGE, HOWEVER, AS RESULT OF NEAR ISOLATION OF

SOVDEL IN FACE OF PRESSURE FROM MOST S & T SUBCOMMITTEE
DELEGATIONS FOR ACTION ON REGULATORY REGIME COVERING
NUCLEAR POWER SYSTEMS IN SPACE. YOUNG

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DIPLOMATIC NOTES, SURVEILLANCE SATELLITES, AIR SEARCH & RESCUE
Control Number: n/a
Copy: SINGLE
Draft Date: 03 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978USUNN00752
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780097-1169
Format: TEL
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197803107/aaaadmjv.tel
Line Count: 119
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 42537bb8-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 15 jun 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3118251
Secure: OPEN
Status: NATIVE
Subject: LEGAL ASPECTS OF COSMOS 954: CONSULTATIONS WITH CANADA
TAGS: TSPA, CA, UR, US, UN
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/42537bb8-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014